

## Message Text

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ACTION NEA-16

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC IMMEDIATE 3131

C O N F I D E N T I A L NEW DELHI 10465

FOLNG SENT NEW DELHI FROM CALCUTTA DTD 06 AUG.

QUOTE: CALCUTTA 1609

E.O. 11652 GDS

TAGS: CASC, PFOR, IN

SUBJ: HARCOS/FLETCHER: CONSULAR ACCESS TO TRIAL

SUMMARY: I HAD TO APPEAR IN COURT TODAY TO GET OUR OAR IN ON THE ISSUE OF CONSULAR ACCESS TO THE TRIAL. THE PROSECUTION IS STILL BEHAVING AS THOUGH THIS WAS AN ESPIONAGE TRIAL AND IT WILL BE DIFFICULT AT BEST FOR THE PRESIDING JUDGE TO RULE IN OUR FAVOR. HE STRONGLY URGES THAT WE RETAIN LEGAL COUNSEL TO RESENT OUR PLEAS IN THE FUTURE. END SUMMARY.

2. I CALLED ON JUDGE CHOWDHURY AT 1:30 PM TODAY. HE KNEW FROM MY LETTER OF AUGUST 2 THAT I WANTED TO TALK ABOUT CONSULAR ACCESS TO THE TRIAL. HE IMMEDIATELY CAUTIONED ME THAT I SHOULD NOT RPT NOT ATTEMPT TO DISCUSS THE ISSUE WITH HIM IN HIS CHAMBERS, BUT SHOULD ADDRESS IT, PREFERABLY THROUGH A LAWYER, IN THE COURT ROOM. HE STRONGLY URGED THAT I RETAIN COUNSEL IF I WANTED TO PURSUE THIS MATTER. HOWEVER, HE WENT ON TO SAY THAT HE EXPECTED TO MAKE A RULING ON THE PROSECUTION'S PETITION FOR IN CAMERA TRIAL IN A HEARING WHICH WOULD BEGIN AT 2 P.M., AND THAT IF HE RULED IN FAVOR OF THE PROSECUTION IT WOULD BE IMPOSSIBLE THEREAFTER FOR ME TO  
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OPEN THE QUESTION OF ACCESS. HE THEREFORE SAW NO CHOICE BUT

FOR ME TO APPEAR AT THE TWO O'CLOCK HEARING. NOT WISHING TO RISK SEEING THE ISSUE GO BY DEFAULT, I WENT FROM HIS CHAMBERS TO THE COURT ROOM.

3. AFTER THE JUDGE OPENED THE HEARING, STATING THAT HE WOULD ADDRESS THE PROSECUTION'S PETITION, DEFENSE LAWYER BHOSE ATTEMPTED TO GET HIS OWN PETITION (REQUESTING PRIOR ACCESS TO THE RECORDS OF THE CASE--CALCUTTA 1570) HEARD FIRST. THE PROSECUTOR ATTACKED THIS PLEA AND THEN WENT ON TO SAY THAT HE COULD NOT PRESENT HIS CASE FOR AN IN CAMERA TRIAL BECAUSE A "THIRD PERSON" WAS PRESENT. HE REQUESTED THE JUDGE TO ORDER ME TO LEAVE.

4. I ASKED TO BE HEARD AND TOLD THE COURT THAT AS CONSUL GENERAL OF THE U.S. FOR EASTERN INDIA IT WAS PART OF MY DUTIES TO SEE THAT THE RIGHTS OF ACCUSED AMERICANS ARE UPHELD. IN PURSUANCE OF THAT I HAD BEEN INSTRUCTED BY MY GOVERNMENT TO SEEK THE COURT'S PERMISSION TO DESIGNATE A REPRESENTATIVE TO BE PRESENT AT THE TRIAL EVEN IF IT WERE TO BE HELD IN CAMERA.

5. THE PROSECUTOR THEN SAID THAT MY PRESENCE AT THE HEARING WOULD RAISE THE QUESTION OF "DIVULGENCE OF OFFICIAL SECRETS" SINCE IT WOULD BE NECESSARY TO DESCRIBE THE STATE'S CASE IN SUPPORTING ITS PLEA FOR AN IN CAMERA TRIAL. HE RECALLED THAT MISS SHERIDAN HAD RECENTLY BEEN PERMITTED BY THE COURT TO HAVE ACCESS TO THE PRISONERS BUT WAS FORBIDDEN BY THE COURT TO DISCUSS THE CASE ITSELF WITH THEM. HE SAID THE USG HAD NO LEGITIMATE INTEREST IN THE CASE AND YET HAD RETAINED LAWYERS FOR THE DEFENSE AND WAS PAYING THEIR FEES. HE SAID IF THIRD PARTIES WERE ALLOWED TO BE PRESENT THERE WOULD BE A GRAVE RISK OF "PUBLICATION" OF THE GOVERNMENT'S CASE, NOTING THAT THERE WERE MANY CORRESPONDENTS AROUND THE TOWN ASKING QUESTIONS ABOUT THE CASE.

6. DEFENSE LAWYER BHOSE STRONGLY DENIED THE PROSECUTOR'S ASSERTION THAT THE USG HAD RETAINED HIM OR PAID HIS FEES. HE SAID INTER ALIA THAT HE DID NOT KNOW THE LAW WITH RESPECT TO CONSULAR ACCESS, BUT HE DID KNOW THAT THE U.S. WAS NOT RPT NOT AN ENEMY COUNTRY AND THAT DIPLOMATIC AND CONSULAR REPRESENTATIVES WERE ACCUSTOMED TO MAINTAINING CONFIDENTIALITY.  
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7. I THEN SAID THAT IN THE NORMAL COURSE OF EVENTS TRIALS WERE HELD IN PUBLIC AND IT WAS THEREFORE NO PROBLEM FOR A CONSULAR OFFICER TO ASSURE HIMSELF AND HIS GOVERNMENT THAT THE RIGHTS OF CITIZENS ACCUSED OF CRIMES WERE BEING OBSERVED, BUT TO EXERCISE THAT RIGHT IN THE CASE OF AN IN CAMERA TRIAL REQUIRED SPECIAL ACCESS. I ASSURED THE COURT THAT CONFIDENTIALITY WOULD BE MAINTAINED. I DESCRIBED THE DISTINCTION

BETWEEN MY GOVERNMENT'S INTEREST AND THAT OF THE DEFENSE AND CONFIRMED THAT THE USG DID NOT RETAIN OR PAY COUNSEL FOR THE ACCUSED.

8. THE JUDGE SAID HE HAD HEARD MY PLEA AND MY SUPPORTING REMARKS, WHICH HE WOULD TAKE INTO ACCOUNT IN THE COURSE OF THE HEARING. HOWEVER, HE RULED THAT DURING THE COURSE OF THE PROSECUTION'S PRESENTATION OF ITS CASE I COULD NOT BE PRESENT. I THANKED HIM AND DEPARTED.

9. COMMENT: (A) AS HAS SO OFTEN BEEN THE CASE, THE PROSECUTION HAS NOT RPT NOT GOT THE WORD FROM NEW DELHI AND THERE IS NO HINT HERE OF THE CHANGE OF ATTITUDE REPORTED IN NEW DELHI 10378. (FURTHER EVIDENCE OF THIS IS TO BE FOUND IN THE FACT THAT WHEN I TOLD THE DEPUTY COMMISSIONER, SPECIAL BRANCH, THIS MORNING THAT GOI OFFICIALS IN DELHI SAY THIS NOT AN ESPIONAGE OR NATIONAL SECURITY CASE AND WENT ON TO ASK HIM ABOUT THE CHARGES, HE SMILED AND SAID THAT SINCE THIS CASE WAS BEING TRIED UNDER THE OFFICIAL SECRETS ACT HE UNFORTUNATELY WAS NOT IN A POSITION TO DISCUSS THE CHARGES.)

10. (B) IT IS LIKELY THAT THE JUDGE'S RULING ON THE IN CAMERA ISSUE WILL BE APPEALED TO THE HIGH COURT NO MATTER WHICH WAY IT GOES AND THAT PROSECUTION WILL APPEAL IF WE ARE GRANTED ACCESS TO THE TRIAL. SHOULD WE CONTINUE TO REPRESENT OURSELVES AS NECESSARY, OR SHOULD WE TAKE THE PRESIDING JUDGE'S ADVICE AND RETAIN COUNSEL SKILLED IN THE LAW RELATING TO THIS KIND OF CASE? PICKERING UNQUOTE. MOYNIHAN

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